IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII Rule 32(2) (b)

Description of case.

Writ Petition No. 208 of 2001 (S/S)

Date of decision :- 30th August, 2006

A.F.R. (Approved for Reporting)

~~Not approved for Reporting~~

Date Initials of Judge

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARNACHAL AT NAINITAL

Writ Petition No. 208 of 2001 (S/S)

Smt. Manju Mehra W/o Sri D.S. Mehra,
R/o Q-No. 1714, Sector 6, Pant Nagar,
P.O. Pant Nagar,
District Udham Singh Nagar. ……. Petitioner

Versus

1. Vice Chancellor,
   G.B. Pant University of Agriculture & Technology,
   Pant Nagar, Udham Singh Nagar.
2. Registrar,
   G.B. Pant University of Agriculture & Technology,
   Pant Nagar, Udham Singh Nagar.
3. Establishment Officer,
   G.B. Pant University of Agriculture & Technology,
   Pant Nagar, Udham Singh Nagar. …….. Respondents

Mr. Manoj Tewari, Advocate for the petitioner.
Mr. Rajendra Dobhal, Advocate for the respondents.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

RAJEEV GUPTA, C. J. (Oral)

Mr. Manoj Tewari, Advocate for the petitioner.

Mr. Rajendra Dobhal, Advocate for the respondents.

They are heard.

2. Petitioner Smt. Manju Mehra has filed this writ petition for the following reliefs:

"A. To issue a writ, order or direction in the nature of certiorari for quashing the order dated 06.02.2001 passed by the Respondent No. 1.

B. To issue a writ order or direction in the nature of mandamus commanding the Respondents to regularize the services of the petitioner on the post of Clerk Typist in view of her work, performance and

long experience and also in view of the permanent nature of work in the University.

C. To issue a writ order or direction in the nature of mandamus commanding the Respondents to pay the same salary to the Petitioner as is being paid to other Class III employees of the University on the basis of the principle of equal pay for equal work.

D. To issue any other suitable writ order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

E. To award the cost of the writ petition in favour of the Petitioner."

3. The petitioner, in substance, is seeking the regularisation of her services.

4. The petitioner was appointed as Clerk Typist on daily wages by Acting Dean, Home Science Faculty of G.B. Pant University of Agriculture and Technology, Pant Nagar, District Udham Singh Nagar Vide order dated 31.05.1993 (Annexure 3). The petitioner since then is continuing as Clerk Typist on daily wages.

5. In the earlier writ petition filed by the petitioner before the High Court of Allahabad, which came to be registered as Writ Petition No. 48386 of 2000, the respondents were directed vide order dated 07.11.2000 to consider petitioner's representation within a period of three months and pass a speaking order.

6. The respondents, in compliance of the above order dated 07.11.2000, have considered and rejected the petitioner's representation vide order dated 06.02.2001 (Annexure 7). The reasons for rejection of the petitioner's representation, as mentioned in this order, are that the State Government has imposed ban on new appointments; under the prescribed recruitment process of the University, the vacant posts are advertised in News Papers on all India basis and candidates are selected

by a "Selection Committee" purely on merits; and the petitioner can apply whenever the ban is lifted and the posts are advertised.

7. Admittedly, the respondent University has not framed any Rules or Regulations or Scheme providing for regularisation of the services of daily wagers. As such, no direction can be issued to the respondents to consider the petitioner's case for regularisation.

8. The learned counsel for the petitioner invited our attention to para 44 of the recent dictum of the Apex Court in the case of **Secretary, State of Karnataka Vs. Umadevi and others** reported in **2006 AIR SCW 1991** and submitted that as the petitioner is working on daily wages for the last about 15 years, the petitioner's services deserve to be regularised.

9. The Apex Court in the case of Umadevi (supra), observed in para 44:

> "44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa (Supra), R.N. Nanjundappa (supra) and B.N. Nagrajan (supra) and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent those not duly appointed as per the constitutional scheme."

10. Thus, it is apparent that those persons who are working on daily wages can be regularised by the Government on account of their being in service in such capacity for a period of ten years or more only when there

are sanctioned vacant posts. The petitioner, in this petition, has not at all pleaded that there are vacant posts against which the petitioner's services can be regularised.

11. In the case of Umadevi (supra), the Apex Court while mandating that a mandamus directing regularisation of a daily wager employee cannot be issued, observed in para 43:

> "43. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to; refer to the decision of the Constitution Bench of this Court in Dr. Rai Shivendra Bahadur v. The Governing Body of the Nalanda College [(1962) Supp 2 SCR 144]. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the Government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.

12. In this view of the matter, the reliefs sought by the petitioner in the writ petition cannot be granted.

13. The writ petition, therefore, is liable to be dismissed and is hereby dismissed.

14. No order as to costs.

(J.C.S. Rawat, J.) 30.08.2006

(Rajeev Gupta, C. J.) 30.08.2006

A